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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PUGET SOUND BY-PRODUCTS,
A DIVISION OF DELAWARE
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-125

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the assessment of a \$250 civil penalty for the alleged violation of section 9.11(a) of Respondent's Regulation I, came before the Pollution Control Hearings Board, David Akana (presiding), Nat Washington, Chairman, and Gayle Rothrock, at a formal hearing in Lacey on January 6, 1982.

Appellant was represented by its attorney, Randall L. St. Mary; respondent was represented by its attorney, Keith D. McGoffin. Court Reporter Lois Fairfield recorded the proceedings.

1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant Puget Sound By-Products (PSB), a division of Darling
6 Delaware Company, Inc., operates a rendering plant at 1640 Lincoln
7 Avenue in Tacoma.

8 PSB collects fish, fallen stock, and other dead animal material
9 and processes them in its newly-improved continuous rendering process.

10 II

11 On July 9, 1981, at about 1:25 p.m., while on routine patrol,
12 respondent's inspector noticed a strong rendering odor while driving
13 near the PSB facility. He noticed that the main receiving doors of
14 the plant were open but did not investigate any further.

15 Later, at about 1:51 p.m., and two miles from the site, the
16 inspector was notified by radio of a complaint of odor from a person
17 located at 1980-1/2 Milwaukee Way, about one-quarter mile north and
18 east of the PSB site. The inspector noticed an odor upon arriving at
19 the complainant's location. After meeting the complainant, they both
20 observed an odor outside at about 2:07 p.m. The inspector described
21 the smell as distinct and definite, with a rendering/dead
22 animal/spoiled meat odor of an unpleasant characteristic. The
23 complainant described the smell as a "heavy, pungent" odor--"you can
24 almost taste it--very distinct cooked, hideous smell." Complainant
25 testified that the smell was much worse before the inspector arrived.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 The odor caused the complainant to want to stay indoors rather than go
2 out into the yard, where much of his responsibilities were; the job
3 was made more difficult and unpleasant because of the odor.
4 Complainant did not become physically sick.

5 The inspector and complainant looked upwind, and seeing the PSB
6 facility, concluded the source of the odor must be from that
7 facility. At about 2:47 p.m., the inspector went to the PSB facility
8 and contacted the plant superintendent. While inspecting the
9 facility, no dead stock was seen and the area appeared clean. There
10 was no severe odor noticeable at that time. The inspector observed
11 that one truck had completed unloading and was being washed.

12 For the foregoing event, appellant was issued a notice of
13 violation of section 9.11(a) of respondent's Regulation I from which
14 followed a \$250 civil penalty (No. 5210) and this appeal.

15 III

16 Another rendering plant is located about 3/4 miles west of the PSB
17 site.

18 IV

19 Appellant did not accept materials to be rendered on July 9, 1981,
20 until sometime between 1:15 p.m. and 1:45 p.m. Rendering operations
21 did not begin until the materials were unloaded, which takes about 20
22 minutes.

23 V

24 PSB has had previous notices of violation of section 9.11(a) for
25 which civil penalties were issued.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 VI

2 Pursuant to RCW 43.21B.260, respondent has filed with this Board a
3 certified copy of its Regulation I and amendments thereto which are
4 noticed.

5 Section 9.11(a) makes it unlawful for any person to cause or
6 permit the emission of an air contaminant, such as an odor, if it
7 causes detriment to the health, safety or welfare of any person or
8 causes damage to property or business.

9 Section 3.29 provides for a penalty of up to \$250 per day for each
10 violation of Regulation I.

11 VII

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board enters these

15 CONCLUSIONS OF LAW

16 I

17 The burden of proof to show that a violation of section 9.11(a)
18 occurred is on the respondent. Although there is evidence submitted
19 which tends to support each party's position, appellant was not shown,
20 by a preponderance of the evidence, to have caused or permitted the
21 emission of an odor as alleged. Accordingly, we conclude that no
22 violation was shown and that the \$250 civil penalty should be vacated.

23 II

24 Any Finding of Fact which should be deemed a Conclusion of Law is
25 hereby adopted as such.

26 From these Conclusions the Board enters this

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

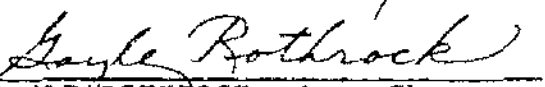
ORDER

The \$250 civil penalty (No. 5210) is vacated.

DONE this 2nd day of February, 1982.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


GAYLE ROTHROCK, Vice Chairman


DAVID AKANA, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER